

1 THE HONORABLE THOMAS S. ZILLY  
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7 UNITED STATES DISTRICT COURT  
8 FOR THE WESTERN DISTRICT OF WASHINGTON  
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10 BUNGIE, INC., a Delaware corporation,  
11  
12 Plaintiff  
13  
14 v.  
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16 AIMJUNKIES.COM, a business of unknown  
17 classification; PHOENIX DIGITAL GROUP  
18 LLC, an Arizona limited liability company;  
19 JEFFREY CONWAY, an individual; DAVID  
20 SCHAEFER, an individual; JORDAN GREEN,  
21 an individual; and JAMES MAY, an individual,  
22  
23 Defendants.  
24

25 Cause No. 2:21-cv-0811 TSZ  
26

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28 **REPLY IN SUPPORT OF  
DEFENDANTS' MOTION TO  
STAY EXECUTION OF  
ARBITRATION JUDGMENT**

**Note on Motion Calendar:  
December 29, 2023**

**Oral Argument Requested**

15 In further support of their Motion to Stay Execution of Arbitration Judgment,  
16 Defendants, by and through their undersigned counsel, state as follows.  
17

18 1. Bungie grossly misstates the facts. As this Court well knows, Bungie has  
19 already conducted scorched earth discovery into, among other things, the financial condition  
20 of all Defendants. Among other things, Bungie has conducted third-party discovery of  
21 Defendants' payment processors, PayPal and Stripe, and has obtained detailed financial  
22 records showing not only monies received during the relevant time period (i.e., November,  
23 2019 through February, 2021) but from the *entire* time period over which Phoenix Digital  
24 conducted business. It is on the basis of revenues received long before November, 2019 that  
25 Bungie makes the claim that, "Defendants earned enormous revenues developing, marketing,  
26 and selling video game cheat software on their network of websites." What revenues Phoenix  
Digital received more than ten years ago is not relevant to, or indicative of, the current  
financial condition of the Defendants.

1       2.       Bungie also conveniently fails to mention that, as it well knows, the bulk of the  
 2 revenues are immediately paid to the third-party developers of the “cheat” products Phoenix  
 3 Digital distributed and were never the property of Phoenix Digital. Bungie’s claim that  
 4 Defendants are somehow sitting on a pile of money they have somehow managed to hide,  
 5 despite the millions of dollars Bungie has already spent on discovery in this, at best, \$40,000  
 case defies reality and common sense.

6       3.       As Bungie also knows, the various bank accounts owned and operated by all  
 7 Defendants, whether corporate or personal, have already been disclosed to Bungie long ago  
 8 and Bungie has been perfectly free to conduct third-party discovery as to them. Indeed, Mr.  
 9 Schaefer during one of his many depositions, invited Bungie to conduct such third-party  
 10 discovery if Bungie did not believe his testimony. Bungie already knows that Defendants  
 11 have no substantial assets, and that what little they had has been more than overshadowed by  
 the costs of this action.

12       4.       In addition to the foregoing, Phoenix Digital has already produced its tax  
 13 records for the relevant period. These tax records show a modest profit for one of the relevant  
 14 years and a loss for the subsequent year. As this Court is well-aware, such tax records, filed  
 15 with the Internal Revenue Service, bring with them the possibility not only of fines but of  
 16 prison sentences in the event they are fraudulent or otherwise knowingly inaccurate. None of  
 17 these records indicates the revenues Bungie claims. Bungie has had these tax records for well  
 18 over one year and has had ample opportunity to seek further discovery as to them. Bungie’s  
 19 unsupported claim that Defendants have not been truthful as to their finances is belied by the  
 20 tax records they have filed under pain of criminal prosecution in the event they were false.

21       5.       Bungie has also been aware (as has this Court) that the “Aimjunkies.com”  
 22 website once operated by Phoenix Digital was sold to an overseas purchaser in May, 2022 for  
 23 a purchase price of \$7,000. Bungie is, and has been, aware that Phoenix Digital has not  
 24 operated the “Aimjunkies.com” website for more than one-and-one-half years and that,  
 25 largely as a result of this lawsuit, has not been engaged in distributing “cheat” software of any  
 26 kind since shortly after this case was filed. Again, Bungie is well aware of this and has  
 27 already conducted extensive discovery into each of the Defendants finances and sources of  
 28 income.

1       6. To the extent Bungie argues that, even if the above is true, it has not been  
 2 established by way of sworn declarations, Defendants respond, (1) such is unnecessary given  
 3 the sworn testimony and sworn discovery responses already provided by Defendants, and (2)  
 4 should the Court require or request such declarations, Defendants will be happy to provide  
 5 them. Indeed, Defendants are agreeable to an evidentiary hearing on this Motion should the  
 6 Court so request or deem it helpful.

7       7. As to the applicable law, this Court enjoys “wide discretion” whether to grant a  
 8 stay under Federal Rule of Civil Procedure 62(d) and waive the bond requirement thereof.  
 9 *See, Kranson v. Fed. Express Corp., No. 11-cv-05826-YGR, 2013 WL 6872495, at \* 1 (N.D.*  
 10 *Cal. Dec. 31, 2013)(citing Dillon v. City of Chi., 866 F.2d 902, 904 (7th Cir. 1988); Arban v.*  
 11 *W. Publ'g Corp., 345 F.3d 390, 409 (6th Cir. 2003)); Intl Telemeter, Corp. v. Hamlin Intl*  
 12 *Corp., 754 F.2d 1492, 1495 (9th Cir. 1985). See also, Townsend v. Holman Consulting Corp.,*  
 13 *881 F.2d 788, 796-97 (9th Cir. 1989), vacated on reh'g on other grounds, 914 F.2d 1136 (9th*  
 14 *Cir. 1990) (“the district court has broad discretionary power to waive the bond requirement if*  
 15 *it sees fit”). Bungie has not cited, nor can it cite, any authority that it would be an abuse of*  
 16 *discretion for this Court to grant the relief requested by Defendants. Again, this Court has*  
 17 *wide discretion whether to grant the relief requested by Defendants, and Defendants urge that*  
 18 *this Court do so in order to prevent manifest injustice.*

19       8. Bungie’s arguments consist largely of the now familiar and tiresome claims,  
 20 (1) that Judge Cox issued an Arbitration Award in Bungie’s favor and (2) this Court has  
 21 accepted Bungie’s argument that some of the Defendants “spoliated” evidence. Indeed, in  
 22 opposition to Defendants’ instant motion, Bungie has, once again, filed approximately fifteen  
 23 exhibits, the bulk of them under seal, even though these exhibits have already been filed with  
 24 the Court on numerous occasions before and could simply have referred to under their  
 25 existing docket numbers. It is apparent that Bungie’s strategy at this point is simply to smear  
 26 Defendants and hope this Court will ignore its principal role of seeking a just result.

27       9. In view of the clear facts that Defendants have virtually no income or assets  
 28 and that Bungie can never hope to collect anywhere near the full amount of the Arbitration  
 Award (which is still subject to a pending appeal), it is clear that the true purpose behind  
 Bungie’s collection efforts are to disrupt Defendants’ already disrupted lives and interfere

1 with their ability even to provide for their defense in this action. This is further evidenced by  
 2 the fact that, despite its clear obligation to do so under Fed.R.Civ.P. 26(b)(4)(E), Bungie has  
 3 brazenly refused to pay *any* of the fees billed by Defendants' expert, Mr. Brad LaPorte, in  
 4 connection with preparing and appearing for a deposition demanded by Bungie itself. (See  
 5 Dkt#271.) This is a transparent ploy by Bungie to chase away Defendants' expert by denying  
 6 him the fees he is owed. Bungie's supposed "collection" efforts, which have no hope for  
 7 success, are simply another tactic on the part of an apparently concerned Bungie to interfere  
 8 with Defendants' ability to represent themselves effectively and have their day in court.

9       10. As noted, this Court has wide discretion whether to grant the relief Defendants  
 10 seek through their motion. The available alternatives are: (1) to permit Bungie to continue its  
 11 hopeless charade of searching for assets that are not there while freezing Defendants' bank  
 12 accounts to preclude them from paying what little they can toward their defense in this case,  
 13 or (2) maintain the status quo by staying enforcement of the judgment for the short time  
 14 remaining before this case is tried and the pending appeal is heard. In the interests of justice,  
 15 Defendants request that this Court exercise its discretion to grant a stay and enable them to  
 16 proceed on the merits.

17       15 For all the foregoing reasons, Defendants motion to stay should be granted.

18       16 Dated December 29, 2023.

19       17 /s/ Philip P. Mann  
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27       27 I certify that this memorandum contains 1482 words, in compliance with the Local  
 28 Civil Rules.